

AGGRAVATED SEXUAL ASSAULT - VICTIM LESS THAN 13
(N.J.S.A. 2C:14-2a(1))

Count _____ of the indictment charges the defendant with aggravated sexual assault.

[READ COUNT OF INDICTMENT]

That section of our statutes provides in pertinent part:

An actor is guilty of aggravated sexual assault if he commits an act of sexual penetration with another person where the victim is less than thirteen years old.

In order to convict defendant of this charge, the State must prove the following elements beyond a reasonable doubt:

1. That the defendant committed an act of sexual penetration with another person.
2. That defendant acted knowingly.
3. That at the time of the penetration the victim was less than thirteen years old.

The first element that the State must prove beyond a reasonable doubt is that defendant committed an act of sexual penetration with (**name of victim**).

According to the law, [**choose appropriate**] vaginal intercourse, cunnilingus, fellatio or anal intercourse between persons or insertion of the hand, finger or object into the anus or vagina, either by the defendant or by another person upon the defendant's instruction, constitute(s) "sexual penetration." Any amount of insertion, however slight, constitutes penetration; that is, the depth of insertion is not relevant.

[Choose the appropriate definition(s)]

The definition of "vaginal intercourse" is the penetration of the vagina, or [**where appropriate**] of the space between the labia majora or outer lips of the vulva.¹

¹ State v. J.A., 337 N.J. Super. 114 (App. Div. 2001). The Appellate Division upheld the charge given by the trial court in that case which included the following language which can be used if the circumstances of the specific case are appropriate: "This means that if you find from all of the evidence presented beyond a reasonable doubt that there was [penile] penetration to the outer area of the vaginal opening, what is commonly referred to as the vaginal lips, that is sufficient to establish penetration under the law."

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The definition of “cunnilingus” is oral contact with the female sex organ.²

The definition of “fellatio” is oral contact with the male sexual organ.³

The definition of “anal intercourse” is penetration of any depth into the anus.⁴

The second element that the State must prove beyond a reasonable doubt is that defendant acted knowingly. A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if he/she is aware that the conduct is of that nature or that such circumstances exist or the person is aware of a high probability of their existence. A person acts knowingly with respect to a result of the conduct if he/she is aware that it is practically certain that the conduct will cause a result. “Knowing,” “with knowledge,” or equivalent terms have the same meaning.

Knowledge is a condition of the mind. It cannot be seen. It can only be determined by inferences from defendant’s conduct, words or acts. A state of mind is rarely susceptible of direct proof but must ordinarily be inferred from the facts. Therefore, it is not necessary that the State produce witnesses to testify that an accused said that he/she had a certain state of mind when he/she did a particular thing. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inferences which may arise from the nature of his/her acts and conduct and from all he/she said and did at the particular time and place and from all surrounding circumstances established by the evidence.

The third element that the State must prove beyond a reasonable doubt is that at the time of the penetration, **(name of victim)** was less than 13 years old. The State must prove only the age of **(name of victim)** at the time of the offense beyond a reasonable doubt. It does not have to prove that defendant knew or reasonably should have known that **(name of victim)** was under the age of thirteen (13).⁵ Moreover, it is immaterial whether the sexual penetration by the defendant [or at

² State v. Fraction, 206 N.J. Super. 532, 535-36 (App. Div. 1985), certif. denied, 104 N.J. 434 (1986). Penetration is not necessary for this act.

³ State in the Interest of S.M., 284 N.J. Super. 611, 616-19 (App. Div. 1995). Penetration is not necessary for this act.

⁴ State v. Gallagher, 286 N.J. Super. 1, 13 (App. Div. 1995), certif. denied, 146 N.J. 569 (1996).

⁵ See State v. Perez, 177 N.J. 540, 555 (2003).

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his/her direction] was with the consent of the victim. The law provides that a child under 13 cannot give his/her consent to such acts.

If you find that the State has proven beyond a reasonable doubt each of these three elements, then you must find the defendant guilty of the crime of aggravated sexual assault. On the other hand, if you find that the State has failed to prove any of these elements beyond a reasonable doubt, then you must find the defendant not guilty of aggravated sexual assault.

(Continue to lesser included offenses where required.)